

AN ACT relating to rare plant protection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) No person, without the written permission of the owner, lessee, or other person entitled to possession, shall take any endangered or threatened plant species from:

(a) State highways;

(b) State property;

(c) Waters of the Commonwealth; or

(d) The private property of another person.

(2) The commission may promulgate administrative regulations to regulate the protection, take, and sale of endangered and threatened plant species. Ginseng shall not be regulated by the commission. Other endangered and threatened plant species which are commercially propagated may be exempted by the commission.

(3) The administrative regulations promulgated under Sections 1 to 5 and 7 of this Act may provide for the taking of endangered and threatened plants for botanical, educational, and scientific purposes, and for propagation in captivity to preserve the species.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

(1) It shall be unlawful for any person to sell any endangered or threatened plant species, or part thereof, which is listed pursuant to Sections 1 to 5 of this Act, without being registered with the commission. Provided, however, that the provisions of Sections 1 to 5 of this Act shall not apply to the purchase or sale of real property upon which the species or part thereof may be located. The commission may promulgate administrative regulations for the registration of

persons engaging in the sale of endangered or threatened plants. Registrations shall expire biennially on December 31. A registration may be revoked at any time by the commission for good cause.

(2) Any person selling any endangered or threatened plant or part thereof shall maintain and keep records of all purchases, identifying the source of the purchase and other information on forms prescribed by the commission. Records shall be made available to the commission and to state nursery inspectors authorized by KRS Chapter 249 during normal business hours for examination or information and shall be kept for a period of two (2) years.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

The commission may certify that a person is propagating nursery-grown plants that are on the endangered or threatened species list subject to the provisions of Sections 1 to 5 of this Act. The certificate may be issued on an annual basis by the commission. Certification shall be conditioned upon the inspection and observation of satisfactory evidence of:

(1) Propagation; and

(2) Propagation facilities.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

All state agencies, in consultation with the assistance of the commission, shall avoid, to the extent reasonably possible, any action funded or implemented by the state agency which may jeopardize the continued existence in Kentucky of any state listed endangered plant species. The commission shall promulgate administrative regulations providing for a prompt consultation process to avoid unreasonable delay of any affected activity. Consultation under this section only shall be required if state agency action would jeopardize a known population of a state endangered plant identified in a

database maintained by the commission. The commission shall make the state endangered plant data available to any affected state agency upon request.

→SECTION 5. A NEW SECTION OF KRS CHAPTER 146 IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of the Open Records Act under KRS 61.870 to 61.884, the commission may, in its discretion, withhold from any person information about the location and population of a species if it determines that disclosure of the information may endanger that species or another species population in any way.

→Section 6. KRS 146.605 is amended to read as follows:

As used in KRS 146.600 to 146.619 and in Sections 1 to 5 of this Act:

- (1) "Commission" means the Kentucky State Nature Preserves Commission, created by KRS 146.425.
- (2) "Endangered species" means any species of plant that is in danger of extirpation throughout all or a significant portion of its range within the Commonwealth, or any plant species determined to be an "endangered species" pursuant to the Endangered Species Act.
- (3) "Endangered Species Act" means the Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), as amended.
- (4) "Ginseng" means the plant species *Panax quinquefolius*.
- (5) "Jeopardize the continued existence" means any action which would destroy or reduce the remaining populations of a state listed endangered plant to a level that would be expected to lead to its extinction in the wild in the state of Kentucky.
- (6) "Person" means any individual, partnership, association, joint stock company, corporation (which includes a government corporation), state agency, city, commission, or political subdivision of the Commonwealth.
- (7) "Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.

~~(8)~~~~(5)~~ "Species" includes any species, subspecies, or variety of plant.

~~(9)~~~~(6)~~ "State agency" shall include only those departments, program cabinets, and administrative bodies enumerated in KRS 12.020.

~~(10)~~ "State property" means any real property or interest therein owned by the Commonwealth of Kentucky.

~~(11)~~ "Take" means to pick, collect, cut, transplant, uproot, dig, or otherwise remove.

~~(12)~~ "Threatened species" means any species of plant likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the state, or any species of plant determined to be a "threatened species" pursuant to the Endangered Species Act.

➔Section 7. KRS 146.990 is amended to read as follows:

(1) Any person, corporation, city, county or other governmental subdivision who violates any of the provisions of KRS 146.200 to 146.360 shall be liable to a civil penalty of not more than one thousand dollars (\$1,000) for said violation and in addition may be enjoined from continuing said violation. Each day upon which such violation occurs or continues shall constitute a separate offense.

(2) Any person who trespasses on private land within the boundary of a designated wild river shall be guilty of a Class B misdemeanor, and upon conviction shall be subject to a fine not to exceed five thousand dollars (\$5,000).

(3) Violations of KRS 146.410 to 146.530 or of any rule or regulation adopted and published by the commission pursuant to the provisions of KRS 146.410 to 146.530, shall be subject to the penalties and sanctions presently provided for in KRS Chapter 224 or as may be amended.

~~(4)~~ Any person who knowingly violates any of the provisions of Sections 1 and 2 of this Act, or any rule or regulation adopted or promulgated respectively thereto, shall be liable for a civil penalty of not more than five hundred dollars (\$500) for each violation and may be enjoined from continuing the violation. Each day

upon which the violation occurs or continues shall constitute a separate offense.